

Exhibits

TTAB

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/030,882



Published in the OFFICIAL GAZETTE on July 24, 2001

06-17-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #71

DaimlerChrysler AG, :

Opposer, :

v. : Opposition No. 91151713

CASUAL DINING, INC., :

Applicant. :

ANSWER OF APPLICANT

CASUAL DINING, INC., applicant, a corporation organized and existing under the laws of the State of Texas, having its principal place of business in Houston, Texas, denies that DaimlerChrysler AG will be damaged by registration of the mark shown in application serial No. 78/030,882.

TRADEMARK TRIAL AND
APPEAL BOARD
02 JUN 25 AM 8:33

Applicant further denies that there will be a likelihood of confusion (Section 2(d)), or the opposer's marks will be diluted (Section 43(a)), for the reasons set forth below.

In further answer, applicant's Answer tracks the paragraph numbering of the Notice of Opposition:

1. Admitted.

2. (A) Admitted.

(B) Admitted.

(C) Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Denied, that opposer has ever used its MERCEDES-BENZ mark for “restaurant services”, or any commercial activity associated with restaurant services. Further, applicant denies that opposer’s “hospitality services, including the provision of food and beverages to members of the public at MERCEDES-BENZ hospitality facilities...” constituted a commercial provision of restaurant, or related services, for purpose of use of the mark under the Lanham Act. In addition, opposer has never sought to register its mark, MERCEDES-BENZ for food or restaurant services.

7. (A) - (G), Admitted.

8. Admitted.
9. Denied. The word "MERCEDES" is itself a Spanish name, and very popular in Mexico as a woman's name. In use, applicant intends to use an apostrophe after Mercedes to clearly indicate the possessive association between Mercedes' and Beans. The further indication of particular services is shown in the phrase "MOSTLY MEXICAN GRILL", following the MERCEDES' BEANS. Rather than an association with a German automobile, applicant is directing consumers to an association with the Mexican restaurant business.
10. Denied.
11. Denied. There are many others using MERCEDES as trademarks and service marks, as well as existing registrations for those marks. For example, there are at least the following, a copy of the TESS print out being attached hereto as Exhibit "A".

REG. NO.	MARK	OWNER
2,495,868	MERCEDES HOMES	Mercedes Homes, Inc.
2,353,439	MERCEDES BY ENRO	Apparel Group, Ltd.
2,293,005	MERCEDES FORD ETC.	Mercedes Ford Fashions
2,401,150	LAS MERCEDES	J. Bouchon & Company Ltd.
1,887,328	MERCEDES GOURMET	Party Systems by mercedes, inc.
1,618,977	MERCEDES	Patten Seed Company
1,387,602	RIOS OF MERCEDES	Western Leather Goods, Inc.
1,370,501	MORGAN MERCEDES	Morgan Mercedes, Inc.
1,096,109	MERCEDES	Enro Shirt Company, Inc.

With so many other registrations, and others using MERCEDES in commerce, applicant denies that MERCEDES-BENZ is a famous mark for any goods other than automobiles, and that the registration of applicant's MERCEDES BEANS, MOSTLY MEXICAN GRILL would dilute the quality of MERCEDES-BENZ for automobiles.

12. Admitted.

13. First sentence admitted. Second sentence denied.

14. First sentence admitted. Second sentence denied.

WHEREFORE, Applicant prays that application SN 78/030,882 be allowed to issue as a registration on the Principal Register, and this opposition be denied and dismissed.

DRY & TASSIN, LLP

By: 


N. Elton Dry
2925 Briarpark, Suite 930
Houston, Texas 77042
Telephone: (713) 223-0500
Facsimile: (713) 223-1476
ATTORNEYS FOR APPLICANT

June 13, 2002

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded via First Class Mail ~~and facsimile~~ to the following counsel of record on this the

13th day of June, 2002.



N. Elton Dry

V.T. Giordano
60 East 42nd Street
New York, NY 10165
Telephone: (212) 661-1400
ATTORNEY FOR OPPOSER